

1/1/11 and the \$1.1m Risk FALSE OR MISLEADING REPRESENTATIONS UNDER THE AUSTRALIAN CONSUMER LAW

Our [recent article](#) addressed the newly announced regulations regarding the Australian Consumer Law (ACL). Although the requirement for the inclusion of specified text on consumer warranty documents has been deferred, other consumer protection provisions of the ACL have not. The new laws and most of the regulations become effective on 1 January 2011.

False or misleading representations about goods of services – Section 29 ACL

Section 29 of the ACL largely replicates the provisions of section 53 of the *Trade Practices Act 1974* (false or misleading representations in relation to the supply of goods or services) with 3 important new additions. The first 2 additions are in relation to the use of testimonials (sections 29(1)(e) and (f)). The 3^d covers entirely different conduct – representations about requirements to pay for contractual rights that are equivalent to statutory rights – Section 29(1)(n).

Section 29(1)(n) prohibits representations being made to the effect that a person must pay in order to gain particular contractual benefits, where those benefits are already available to the person by operation of the law. The intent of this new prohibition is to prevent businesses trying to “upsell” products that give rights that are wholly or partly equivalent to the statutory conditions, warranties, guarantees, rights or remedies that the customer would already have.

This new prohibition may impact some existing business practices, particularly where “extended warranties” or similar additional service programmes are offered. If your standard goods warranty is 12 months, for example, and you offer a 2 year warranty against defects for an additional fee, you need to be absolutely certain that the statutory consumer rights do not already impose that 2 year warranty obligation upon your business. If the law does, and you offer such an “extended warranty”, you will be acting in contravention of the new law.

The criminal offence provisions of the ACL apply to contraventions and penalties of up to \$1.1m (corporations) and \$220,000 (other persons) may be applied. Alternatively civil proceedings can result in similar pecuniary penalties.

The ACCC also has the power to issue infringement notices of up to \$66,000 for corporations and \$6,600 for others. These infringement notices are new and intended to allow the ACCC freedom to act quickly in relation to matters that are not serious enough to warrant prosecution.

The new law is effective as of and from 1 January 2011 and applies to all conduct in trade or commerce across Australia. Each business bears the burden of ensuring it is compliant with the new law.

Further information

If you would like further information, please contact one of the Cowell Clarke competition law practice group members on T +61 8 8228 1111.

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